IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.215 OF 2002

The Commissioner of Income-tax
Central-I/II, Mumbai .. Appellant.
V/s.
M/s.Parle Biscuits Limited .. Respondent.

Mr.K.R. Chaudhary with Vijay Kantharia i/b. H.D. Rathod for the appellant.
Mr.F.B. Andhyarujina, Senior counsel with Ms.R.M. Sidhwa for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 23RD AUGUST, 2004.

P.C. :

Heard.

2. In the appeal two substantial questions of law have been proposed. The said questions read thus :

> "1. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting addition of Rs.2,28,539/- made to the closing stock on account of Modvat credit?
>
> 2. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT, was justified in holding that income from interest, rent dividend and profit on sale of toothpaste should be included in the eligible profits for working out deduction allowable u/s.32AB

of the I.T. Act, 1961 ?"

3. As regards proposed question No.1 the learned counsel for the revenue fairly conceded that the controversy stands concluded by the judgment of the Supreme Court in the case of Commissioner of Income Tax V/s. Indo-Nippon Chemicals Co. Limited [261 ITR 275].

4. Insofar as question No.2 is concerned, we find that the controversy stands concluded by the judgment of the Supreme Court in the case of Apollo Tyres Limited V/s. CIT [255 ITR 273]. The Supreme Court in the case of Apollo Tyres Limited observed thus :

> . "A perusal of section 32AB, as it stood at the relevant time, shows that if an assessee has a total income including income chargeable to tax under the head "Profits and gains of business or profession" and if the income from such business is derived from an "eligible business" and if the assessee has out of such income utilised any amount during the previous year for the purchase of new plant or machinery then it is entitled to a set off of a sum equal to 20 per cent. of the profit of such eligible business as computed in the accounts of the assessee which account has been audited in accordance with sub-section (5) of section 32AB.
>
> . The dispute in the present case is in regard to the question whether the assessee's investment in the UTI is business, and if so, is it a business

which qualifies to be an "eligible business" under section 32AB ? In regard to the first aspect, we must note that the Tribunal as a question of fact based on material on record has come to the conclusion that the investment in the UTI by the assessee-company is in the course of its business and its business of manufacture and sale of tyres and sale and purchase of units of the UTI are common in nature and both the businesses are intertwined and interlaced. This finding is accepted by the High Court also. We also find that this business of the assessee-company of buying and selling of units is a business as contemplated under section 32AB of the Act. The question then is: is it an eligible business under the said section ? The term "eligible business" is defined under sub-section (2) of section 32AB. As per that definition, all business of an assessee-company will be an eligible business unless it falls under the type of business enumerated in sub-clauses (a) and (b) of section 32AB(2). It is nobody's case that this business of the assessee-company is one of those businesses which fall under business enumerated in sub-clauses (a) and (b) of sub-section (2) of section 32AB. Therefore, there is no doubt that the business of the assessee-company is an eligible business. The fact that it is shown under a different head of income would not deprive the company of its benefit under section 32AB so long as it is held that the investment in the units of the UTI by the assessee-company is in the course of its "eligible business". Therefore, in our opinion, the dividend income earned by the assessee-company from its investment in the UTI should be included in computing the profits of eligible business under section 32AB of the Act".

5. The learned counsel for the revenue did not venture to demonstrate that the business of the

assessee falls under the type of business enumerated in sub-clauses (a) and (b) of Section 32AB(2).

6. Accordingly, the tribunal's view relating to deduction under Section 32AB with regard to income from interest, rent, dividend and profit on sale of toothpaste that they fall within the meaning of 'eligible business' cannot be faulted.

7. The appeal is, accordingly, dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)